CHAPTER 4: RAILROAD FUNDING IN KENTUCKY

This chapter discusses the primary programs used for railroad funding in Kentucky, including options at the federal and state levels.

4.1 FEDERAL FUNDING SOURCES

Various funding mechanisms for rail are available through the federal government as described below.

4.1.1 Federal Funding of Intercity Passenger Rail

The Passenger Rail Investment and Improvement Act (PRIIA) was enacted in October 2008. In addition to reauthorizing Amtrak, PRIIA tasks Amtrak, the United States Department of Transportation (USDOT), the Federal Railroad Administration (FRA), states, and other stakeholders to improve operations, facilities, and services related to passenger rail. PRIIA focuses on intercity passenger rail, including Amtrak's long-distance routes and the Northeast Corridor (NEC), state-sponsored corridors throughout the nation, and the development of high-speed rail corridors. PRIIA provided more than $13 billion between 2009 and 2013 for these activities. No funds were allocated to Kentucky.

Following the passage of the American Recovery and Reinvestment Act (ARRA) of 2009, the FRA established the High-Speed Intercity Passenger Rail Program (HSIPR), under which the FRA solicited applications for more than $10 billion in grant funding. Federal fiscal year (FY) 2010 was the last year to include funding for the HSIPR program, with no funding for the program included in FY 2011, 2012, or 2013 budgets. Kentucky did not receive any funding under PRIIA or ARRA for passenger rail projects, although its rail system did benefit from the Transportation Investment Generating Economic Recovery (TIGER) grant program discussed in the following section.

4.1.2 Transportation Investment Generating Economic Recovery (TIGER)

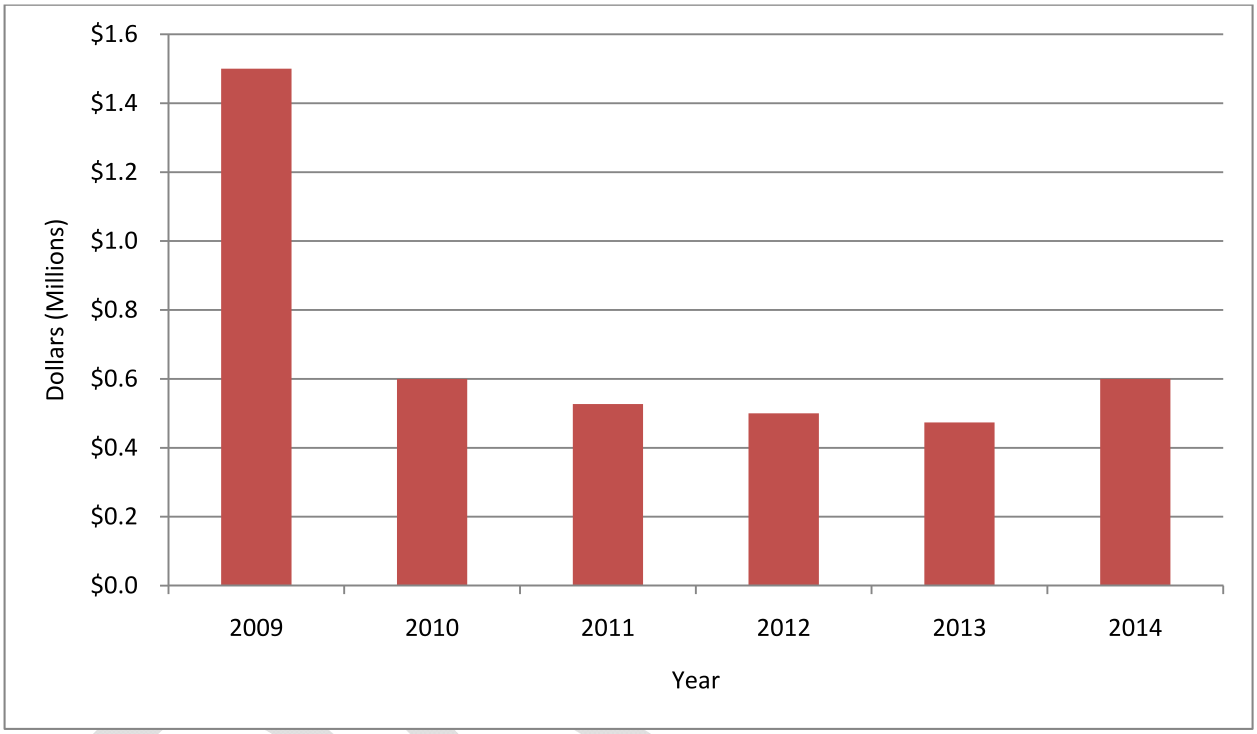
The first round of the TIGER grant program was included in the 2009 version of ARRA. Five additional rounds of TIGER grants have since been authorized. These grants are awarded by USDOT on a competitive basis for road, rail, transit, and port projects that are judged to create a significant impact on the nation, a region, or a metropolitan area. All grants must be applied to publicly accessible transportation infrastructure. Projects generally must be "shovel ready," i.e., ready for construction within a specified length of time, although TIGER II (2010) and TIGER VI (2014) allowed some money to be used for planning studies or research.

TIGER grants are designed to fund up to 80 percent of the infrastructure improvement, with the remaining 20 percent to be provided by a local source. Applications are typically considered more competitive if they request a smaller federal percentage by providing a more substantial investment from local government agencies or private companies. From FY 2009 through FY

2012, a total of $3 billion in funding was available through the TIGER program. TIGER V funds in 2013 totaled $474 million. TIGER VI funds in 2014 totaled $600 million, including $120 million dedicated to rural areas and up to $35 million for planning activities.

Figure 4-1 shows the total funds awarded or available through TIGER grants since inception in 2009.

Figure 4-1: TIGER Funds, 2009-2014



Source: United States Department of Transportation (USDOT), 2014

TIGER grants have funded several rail projects in Kentucky. R.J. Corman Railroad Group received a $17.5 million TIGER grant in 2010 for the "Appalachian Regional Short-Line Rail" project to improve rail infrastructure on five short line railroads operating in Kentucky, Tennessee, and West Virginia. The portion of the grant for improvements in Kentucky was $12.9 million, to which R.J. Corman added approximately $3 million and the state added $200,000. The Kentucky portion of the project involved upgrades to 246 miles of track along R.J. Corman Railroad Group's Memphis, Central Kentucky, and Bardstown lines in 12 counties. Work in Kentucky included improvements to rail, at-grade crossings, and bridges. More information about this grant can be found at: http://www.dot.gov/sites/dot.gov/files/docs/Tiger_I_Awards.pdf.

The Paducah and Louisville Railway, Inc. (PAL) was awarded a $14.4 million grant in 2011 to replace two bridges near Fort Knox. The railroad contributed approximately 20 percent of the total, (about $2.9 million) and the state contributed $1.0 million. For more information about this grant, visit http://www.dot.gov/sites/dot.gov/files/docs/TIGER_2011_AWARD.pdf.

4.1.3 Section 130 Railway-Highways Crossing Program

The Section 130 Railway-Highways Crossing Program provides federal support for projects that improve safety at public highway-rail at-grade crossings. States may use funds to install or upgrade warning devices, eliminate at-grade crossings through grade separation, or consolidate or close at-grade crossings. The federal share of these funds is 90 percent and the local share is 10 percent. Funds are allocated to each state by a formula that is partly based on number of crossings in the state. In order for states to receive funds from this program, they must conduct an annual survey of all public crossings and prioritize them for improvement. In Kentucky, Section 130 funds are prioritized annually by the KYTC Division of Right of Way and Utilities, Railroad Section.

4.1.4 Selected Moving Ahead for Progress in the 21st Century Act (MAP-21) Programs with Potential Rail Impacts

4.1.4.1 Congestion Mitigation and Air Quality (CMAQ) Improvement Program

Funding for the Congestion Mitigation and Air Quality (CMAQ) program is available for "nonattainment" areas – those that do not meet the National Ambient Air Quality Standards (NAAQS) – as well as former nonattainment areas that are now in compliance, referred to as "maintenance" areas. Within Kentucky, Boone, Kenton, and Campbell Counties are all considered to be nonattainment areas for the eight-hour ozone standard.[29] Bullitt and Jefferson Counties are considered nonattainment areas for particulate matter (PM).[30] Other CMAQ-eligible counties include: Boyd, Christian, Daviess, Edmonson, Fayette, Greenup (partial designation), Hancock (partial designation), Knott, Lawrence, Livingston (partial designation), Marshall, Oldham, and Scott.

The program provides funds for transportation projects and programs that improve air quality by reducing transportation-related emissions of criteria pollutants under the NAAQS established by the federal Clean Air Act. Examples of CMAQ-funded rail projects nationally include diesel engine retrofits, idle-reduction projects in rail yards, and projects that substitute rail for truck transportation such as intermodal terminals or rail sidings. CMAQ funds have been used to construct intermodal terminals, improve rail access to ports, improve rail yards, and a variety of other rail projects.

[29] Standard is based on the highest daily concentrations for 8 hours during 25 days per year.
[30] Standard is based on the annual average over 3 years.

New language from Moving Ahead for Progress in the 21st Century Act (MAP-21) places emphasis on selected project types that reduce PM 2.5 pollution, including electric and natural gas vehicle infrastructure and diesel retrofits. State departments of transportation and metropolitan planning organizations (MPOs) select and approve projects for funding. The federal share of these funds is 80 percent, with the remaining 20 percent provided by state, local, or private funding. Applications for CMAQ funds are annually prioritized by the KYTC Office of Local Programs and considerable competition exists. Although rail projects are eligible for CMAQ funds, they are not typically selected, mostly due to the fact that state and local governments most commonly use project matching funds derived from motor fuel taxes that cannot be used for other modes. More information about the CMAQ program can be found at: http://transportation.ky.gov/Local-Programs/Pages/Congestion-Mitigation-and-Air-Quality.aspx.

Note that application processes for CMAQ must follow the Local Public Agency (LPA) Project Administration Guidance. More information can be found at: http://transportation.ky.gov/local-programs/pages/lpa%20project%20administration.aspx.

4.1.4.2 Transportation Alternatives Program (TAP)

The Transportation Alternative Program (TAP) provides funding at 80 percent federal share and the remaining 20 percent picked up by state and/or local match. These funds are restricted to activities related to surface transportation. Several of these activities are relevant to rail, including rail corridor preservation via rail trail facilities and preservation of historic rail buildings, as well as scenic overlooks and turnouts. This program is also administered by the KYTC Office of Local Programs. More information about the TAP program can be found at: http://transportation.ky.gov/Local-Programs/Pages/transportation_alternatives.aspx.

Note that application processes for TAP must follow the LPA Project Administration Guidance. More information can be found at: http://transportation.ky.gov/local-programs/pages/lpa%20project%20administration.aspx.

4.1.4.3 Surface Transportation Program (STP)

The Surface Transportation Program (STP) is a grant program available for improvement of any federal-aid highway, bridge, or transit capital project. Eligible improvements related to rail involve increasing the vertical clearance of highway bridges over rail, eliminating highway-rail crossings, and improving intermodal connectors. The federal share is 80 percent and a 20 percent local match is required from funds other than the gasoline tax. For more information about the STP program, see http://www.grants.gov/web/grants/home.html.

4.1.5 Other Federal Funding Programs Relevant to Rail

4.1.5.1 Railroad Rehabilitation and Improvement Financing (RRIF) Program

The Railroad Rehabilitation and Improvement Financing (RRIF) Program provides direct federal loans and loan guarantees to finance the development of railroad infrastructure. Eligible applicants include railroads, state and local governments, government-sponsored authorities and corporations, joint ventures, and shippers served by a single railroad who wish to build a connection to a competing carrier. Eligible projects include improvements to, rehabilitation of, or acquisition of freight and passenger railroad equipment, track, structures, multimodal facilities, as well as refinancing of associated debt. Direct loans can provide up to 100 percent of project cost with repayment periods up to 35 years. Interest rates are equal to the U.S. Treasury rate, but fees must be paid to the government to defray the cost of making the loan. These include a Credit Risk Premium, which depends upon the level of risk of the loan, and an investigative fee if outside professional services are necessary to issue the loan. R.J. Corman Railroad Group obtained about $58.9 million worth of RRIF financing in 2006 to purchase 24 locomotives, 200 center beam flat cars, and 100 coal hopper cars. No loans have been made under the program in Kentucky since 2012. More information about the loan program can be found at: http://www.fra.dot.gov/Page/P0128.

4.1.5.2 U.S. Department of Commerce, Economic Development Administration (EDA)

The programs under the Economic Development Administration (EDA) provide grants for projects in economically distressed areas.[31] The programs can provide between 50 and 80 percent of the total project cost, depending upon the level of economic distress in the area. According to the Appalachian Regional Commission (ARC), 38 of the 120 counties in Kentucky are considered distressed as of March 2014.[32]

The Public Works program is aimed at helping areas improve physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The Economic Adjustment program helps communities that are experiencing economic disruptions such as natural disasters, military base closures, trade-related disruptions, or major private sector employer restructurings.

Examples of rail-related EDA grants include the reconstruction of damaged rail infrastructure, rail spurs, and access projects. According to the American Short Line and Regional Railroad Association (ASLRA), more than $55 million in EDA grants have gone to rail projects since 2008, with an average grant amount of $1.9 million per project.

---

[31] By federal definition, an area is “economically distressed” if per capita income is 80 percent less than the national average or unemployment over the past 24 months exceeds the national average by one percent or more.

[32] http://www.arc.gov/research/MapsofAppalachia.asp?MAP_ID=90

4.1.5.3 U.S. Environmental Protection Agency, Diesel Emission Reduction Act (DERA) National Funding Assistance Program

Diesel Emission Reduction Act (DERA) funding is available through the U.S. Environmental Protection Agency (EPA) for projects that lower locomotive emissions. These include retrofit technologies, idle-reduction technologies, aerodynamic technologies, and early engine replacement or repower. For FY 2013, $9 million in funding was available. The federal match depends upon the type of project. There is no requirement that a project be in an air quality nonattainment area, but applications are scored higher if a project is located in a high priority area.

4.1.5.4 Transportation Infrastructure Finance and Innovation Act (TIFIA)

The Transportation Infrastructure Finance and Innovation Act (TIFIA) provides credit assistance for large projects. This includes up to $50 million or 33.3 percent of a state's annual apportionment of federal-aid funds, whichever is less. There are no limits on the amount financed by TIFIA. Eligible applicants include state and local governments, transit agencies, railroads, special authorities, special districts, and private entities. TIFIA provides three types of financial assistance:

1. Secured direct loans: These have a maximum term of 35 years after project completion. Repayment may begin up to five years after project completion.

2. Loan guarantees: The federal government guarantees a borrower's repayments to a non-federal lender. Loan repayments to the lender must begin no later than five years after completion of the project.

3. Standby line of credit: A federal loan serves as a contingent source of cash to supplement project revenues. Standby financing is available during the first 10 years after project completion.

MAP-21 established a multi-step application process that begins with a letter of intent and determination of eligibility. All projects eligible for STP funding are eligible for TIFIA, as well as intercity passenger rail facilities and vehicles, publicly owned freight rail facilities, intermodal freight transfer facilities, access to intermodal freight transfer facilities, and projects located within the boundary of a port terminal under certain conditions. More information about the TIFIA program can be found at: http://www.fhwa.dot.gov/ipd/tifia/.

4.1.5.5 State Infrastructure Banks (SIBs)

State Infrastructure Banks (SIBs) are revolving infrastructure investment funds for surface transportation that are established and administered by states. SIBs were originally authorized by the federal government in 1995 and expanded in 1997. Kentucky does not currently have a SIB. Under the previous federal highway legislation, SAFETEA-LU, up to 10 percent of funds available for transit capital grants as well as rail capital grants could be used to capitalize a SIB on an 80/20 federal/non-federal basis. MAP-21 has not allowed new 2013-2014 funding to be used to capitalize SIBs, nor does it allow states to capitalize SIBs using federal-aid highway funding appropriated after the expiration of the SAFETEA-LU extension. For more information about SIBs, see www.fhwa.dot.gov/ipd/finance/tools_programs/federal_credit_assistance/sibs/.

4.1.5.6 Private Activity Bonds

A private activity bond is a bond issued by or on behalf of a local or state government for the purpose of financing the project of a private user. These bonds enjoy the same tax exempt status as other state and local bonds. Up to $15 billion can be used for transportation infrastructure and freight transfer facilities, such as private rail-truck facilities. For example, this type of bond was recently issued to finance rail-related intermodal development by CenterPoint, a development company, in Chicago, Illinois, and in Kansas City, Missouri. At least 95 percent of the net proceeds of bond issues must be expended within five years of issue date. More information about private activity bonds can be found at: www.fhwa.dot.gov/ipd/finance/legislation/federal_debt/pabs.aspx.

4.1.6 Federal Tax Incentives

The "Section 45G" regulation refers to Section 45G of the Internal Revenue Code. Originally enacted in January 2005, the Section 45G provision enables short line and regional railroads to claim a tax credit of 50 percent for every dollar spent on capital improvements, with a cap of $3,500 per mile of track. This tax credit technically expired on December 31, 2013, although legislation was introduced in early 2014 to extend the tax credit through 2016. For information about tax incentives, see www.aslrra.org/legislative/Short_Line_Tax_Credit_Extension/.

4.2 STATE FUNDING SOURCES

4.2.1 Recent Kentucky Rail Funding Initiatives

The state highway fund is constitutionally mandated, via Section 230 of the Kentucky Constitution, to be used only on highways, with no dedicated source for rail funding. Some states that border Kentucky have more flexibility when it comes to the use of funds derived from motor fuels taxes. More information about the limits of the state highway fund can be found at: http://www.lrc.state.ky.us/legresou/constitu/230.htm.

In May 2011, the Kentucky Legislature voted to make General Funds available in the form of assistance grants totaling $3,138,726 through the Kentucky Short Line Railroad Assistance (KSRA) Fund, administered by the KYTC. All but one of the grants represented 50 percent of the cost of a project, with each railroad providing the remainder as a match. The exception was a project to replace a PAL bridge at Muldraugh in Hardin County. That grant was $1 million and the total project cost was $8 million.

A summary of KSRA grants made in 2011 includes:

- **R.J. Corman Railroad Group-Central Kentucky Line**
  $463,038 for rail siding in Midway, Woodford County
  $645,828 for rail line expansion in Lexington, Fayette County
- **Paducah and Louisville Railway, Inc.**
  $1 million for bridge replacement at Muldraugh, Hardin County
  $39,150 for crossing rehabilitation on KY 1646 in Elizabethtown, Hardin County
  $34,740 for crossing rehabilitation on KY 920 in Leitchfield, Grayson County
  $25,344 for crossing rehabilitation on KY 907 in Louisville, Jefferson County
- **Tennken Railroad**
  $196,740 for rail replacement in Fulton County
- **Louisville and Indiana Railroad**
  $183,635 for repair of Ohio River bridge pier in Jefferson County
- **Transkentucky Transportation Railroad**
  $359,901 for tie replacement and rail bed rehabilitation in Bourbon, Nicholas, Fleming, and Mason Counties
- **Kentucky Railway Museum**
  $190,350 for track and crossing rehabilitation and repairs in Nelson and LaRue Counties

In October 2013, the state announced that $3.2 million in grants would be made available through FY 2014 to short line railroads to help fund safety improvements at at-grade highway-rail crossings in Kentucky. The grants, all of which required a dollar-for-dollar match from the applicants, were funded through the Kentucky Railroad Crossing Improvement (KRCI) Program, administered by KYTC.

Later that year, KYTC processed applications for 172 projects at 165 crossing locations. These projects included 57 crossing reconstructions and 115 signal improvements, including upgrades to existing signage, equipment, and light emitting diode (LED) lighting.

The R.J. Corman Railroad Group received grant money for 86 of the projects. PAL received grant money for 64 of the projects. Transkentucky Transportation Railroad, Inc. (TTI) received grant money for 22 of the projects. At least 11 of the projects were located at at-grade crossings with at least one crash involving motor vehicles or pedestrians in the last five years. Six of the projects were at at-grade crossings on “Excepted” track, where passenger trains are prohibited and the speed limit for freight trains is 10 mph.

While this is a non-recurring funding source, another $3.2 million was entered into the Transportation Budget (HB 236) by the Kentucky Legislature for FY 2015 and FY 2016 to make additional short line rail safety improvements. These funds are restricted to public safety improvements to at-grade crossings, railroad bridge overpasses, and railroad crossing safety equipment.

4.2.2 Kentucky Tax Credits

In addition to grant funding, Kentucky makes certain tax credits available to companies and railroads that invest in rail and rail-related projects. These are administered and made available through the Kentucky Railroad Assistance Program. More information on Kentucky tax credits can be found at: http://transportation.ky.gov/Railroads/Pages/Railroad-Assistance-Funds.aspx.

4.2.3 Public-Private Partnership Opportunities for Rail in Kentucky

In Kentucky, Public Private Partnerships (P3) for funding infrastructure is a relatively new and emerging tool. Recently, project-specific legislation was passed to allow a portion of the Louisville-Southern Indiana Ohio River Bridges Project to be constructed using a P3. In 2014, the Kentucky Legislature passed a bill that would have allowed P3s to be utilized on a much broader range of projects. Due to some limitations included in the language of the bill, the Governor subsequently vetoed it. It is anticipated that the use of P3s for funding public infrastructure in Kentucky will reappear in upcoming legislative sessions. The use of P3s for other modes such as rail may emerge as Kentucky eventually enables broad legislation and gains more experience with P3s.